

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO *et al.*,

Debtors.¹

PROMESA Title III

Case No. 17 BK 3283-LTS

(Jointly Administered)

**STATEMENT IN SUPPORT AND RESERVATION OF RIGHTS OF
FINANCIAL GUARANTY INSURANCE COMPANY WITH RESPECT TO
THE SEVENTH AMENDED TITLE III JOINT PLAN OF ADJUSTMENT
OF THE COMMONWEALTH OF PUERTO RICO, *ET AL.***

¹ The Debtors in these Title III cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's Federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico ("Commonwealth") (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 04780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

Financial Guaranty Insurance Company (“FGIC”) hereby submits this statement in support and reservation of rights (the “Statement in Support”) with respect to the *Seventh Amended Title III Joint Plan of Adjustment of the Commonwealth of Puerto Rico, et al.* (ECF No. 17627, as amended, the “Plan”)² and respectfully state as follows:

STATEMENT IN SUPPORT

1. On July 30, 2021, the Oversight Board filed the Plan. Thereafter, on August 2, 2021, this Court entered an *Order Establishing Procedures and Deadlines Concerning Objections to Confirmation and Discovery in Connection Therewith* (ECF No. 17640, the “Procedures Order”), which was amended on October 5, 2021 (ECF No. 18394). On September 28, 2021, this Court entered an *Order Regarding Procedures for Hearing on Confirmation of Plan of Adjustment* (ECF No. 18276-1, the “Hearing Procedures Order”).

2. The Procedures Order establishes that eligible creditors are to file objections to the Plan by October 19, 2021, and that replies to such objections are to be made by October 27, 2021. *See* Procedures Order § 3. The Hearing Procedures Order requires counsel for parties-in-interest that have “filed a timely objection to *or statement on confirmation of the Plan*” to file a pretrial informative motion and participate at the Confirmation Hearing. *See* Hearing Procedures Order § 4(a) (emphasis added).

3. FGIC files this Statement of Support to comply with the Hearing Procedures Order and Procedures Order and specifically reserves its rights to respond on or before October 27, 2021, to any objections raised to the Plan, including any objection made by the GDB Debt Recovery

² Unless otherwise indicated, ECF numbers referenced in this Statement in Support refer to the docket in Case Number 17-3283-LTS. Capitalized terms used in this Statement in Support but not defined herein shall have the meanings ascribed to them in the Plan.

Authority and its servicer, AmeriNational Community Services, LLC, and its collateral monitor, Cantor-Katz Collateral Monitor LLC (the “DRA Parties”).

4. FGIC is the holder of certain claims against the Commonwealth, including FGIC Insured Bond Claims, FGIC CW/PRIFA Rum Tax Claims, FGIC CW/HTA Bond Claims, and FGIC CW/Convention Center Claims (the “FGIC Claims”).

5. FGIC is a party to the GO/PBA Plan Support Agreement, the HTA/CCDA Plan Support Agreement, and the PRIFA Plan Support Agreement (the “Support Agreements”) and supports confirmation of the Plan consistent with the Support Agreements. Consistent with the Support Agreements, the qualifying modifications proposed for PRIFA and CCDA in their respective Title VI proceedings enjoy broad creditor support and should be approved concurrent with confirmation of the Plan.

6. The Plan provides treatment for the FGIC Claims as part of Classes 5, 20, 27, 59, 60, and 61 and pursuant to Section 75.4. A material portion of FGIC’s recovery under the Plan is the Clawback Recovery, which includes the distribution of certain conditional value instruments known as the Clawback CVIs. (Plan §§ 1.139, 1.140).

7. The Court should approve the settlements of the FGIC Claims as provided in the Support Agreements and the Plan pursuant to FED. R. BANKR. P. 9019. *See Jeffrey v. Desmond*, 70 F.3d 183, 185 (1st Cir. 1995) (stating the factors for approving a compromise). These settlements are fair, equitable, reasonable and appropriately balance the value of the FGIC Claims against their recovery under the Plan. (ECF No. 18097-1, ¶¶ 103-136).

8. The FGIC CW/HTA Bond Claims, which are based on the HTA 98 Bonds, are to receive the CW/HTA Clawback Recovery under the Plan. (Plan §§ 63.1, 63.2). The Plan establishes a CVI Payment Reserve for a portion of the CW/HTA Clawback Recovery, and the CVI Payment Reserve shall be distributed upon the GDB Loan Priority Determination. (*Id.*).

9. The GDB Loan Priority Determination is set to be resolved in Adv. Proceeding No. 21-00068 and as part of the Confirmation Hearing in accordance with the procedures established by this Court. (ECF No. 25, Adv. Proc. No. 21-00068; *see also* ECF No. 79, Adv. Proc. No. 21-00068 (reaffirming)).

10. FGIC, therefore, incorporates by reference its pleadings and papers in Adv. Proc. No. 21-00068 into this Statement in Support, including *Defendants' Answer, Defenses and Counterclaims* (ECF No. 43), *Defendants' Motion to Dismiss the Complaint* (ECF No. 44), and *Defendants' Reply in Support of their Motion to Dismiss the Complaint* (ECF No. 68). Consistent with such pleadings and papers, this Court should resolve the GDB Loan Priority Determination at the Confirmation Hearing (to the extent it has not already been determined prior to the Confirmation Hearing) by determining that the GDB HTA Loans are subordinate to the HTA 98 Bonds and that the CW/HTA Clawback Recovery shall not be distributed to holders of the GDB HTA Loans.

11. Altogether, this Court should find that the Plan to the extent it implements the Support Agreements complies with the requirements of PROMESA § 314(b) and, therefore, confirm the Plan. 48 U.S.C. § 2174(b).

RESERVATION OF RIGHTS

12. FGIC hereby reserves all of its rights with respect to the Plan and any amendments thereto, including its rights to be heard at any contested confirmation hearing and to respond to any objections to the Plan, including any objection made by the DRA Parties. To the extent that any response to filed objections is necessary, FGIC will file such response no later than October 27, 2021, which is the deadline for responding to objections established in the Procedures Order.

Dated: October 19, 2021

REXACH & PICÓ, CSP

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CERTIFICATE OF SERVICE

I hereby certify that I filed this document electronically with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to all parties of record in the captioned case.

October 19, 2021.

By: /s/ Martin A. Sosland